

LAW OFFICES
KOTEEN & NAFTALIN, L.L.P.
1150 CONNECTICUT AVENUE
WASHINGTON, D.C. 20036-4104

BERNARD KOTEEN*
ALAN Y. NAFTALIN
ARTHUR B. GOODKIND
GEORGE Y. WHEELER
MARGOT SMILEY HUMPHREY
PETER M. CONNOLLY
CHARLES R. NAFTALIN
GREGORY C. STAPLE
R. EDWARD PRICE
JULIE A. BARRIE

* SENIOR COUNSEL

TELEPHONE
(202) 467-5700
TELECOPY
(202) 467-5915

January 11, 1999

Magalie Roman Salas
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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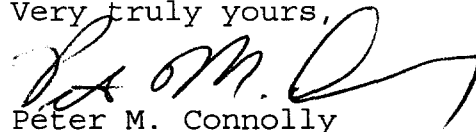
Re: CC Docket No. 96-45

Dear Ms. Salas:

Herewith transmitted, on behalf of United States Cellular Corporation, are an original and four copies, of its Comments on the Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,


Peter M. Connolly

Enclosure
cc (w/encl.): Sheryl Todd
ITS

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Before the
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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
Federal-State)
Joint Board on) CC Docket No.96-45
Universal Service)

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OF COMMENTS OF UNITED
STATES CELLULAR CORPORATION**

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Summary

United States Cellular Corporation ("USCC") opposes the FCC's designation of 15% as the appropriate percentage of interstate revenues for cellular carriers to include in their "universal service" worksheets and endorses the current approach that wireless carriers determine their own percentages of interstate revenues.

The FCC lacks an adequate basis in available wireless data to prescribe 15% or any other arbitrary proxy as the appropriate percentage. The percentage of wireless revenues which is interstate in nature is generally less than 15% and the interstate percentage varies with region, market size, and carrier size. Provided carriers have a reasonable basis for their interstate calculations, they should continue to perform them individually.

Moreover, a proposed 15% benchmark would be unfair to small and medium sized wireless carriers, whose interstate percentages will tend to be smaller than those of larger carriers.

USCC's method of calculating its interstate revenues, which relies on actual market by market data where available, and reasonable allocations of revenue not readily attributable to interstate or intrastate categories, is fair and reasonable and is more accurate than would be the application of the same interstate fixed percentage to all of its markets.

Finally, the FCC should leave the process of designating and regulating "eligible telecommunications carriers" (which will provide services qualifying for universal service support) to the states while ensuring that the states regulate such carriers on a "competitively neutral" basis. What the FCC should not now do is attempt to prejudge and micromanage such service offerings by prescribing particular packages of services which must be offered.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Federal-State)
Joint Board on) CC Docket No.96-45
Universal Service)

**COMMENTS OF UNITED
STATES CELLULAR CORPORATION**

United States Cellular Corporation ("USCC") hereby files its Comments on the Memorandum Opinion and Order and Further Notice of Proposed Rulemaking¹ in the above-captioned docket. USCC owns and/or operates cellular systems in 45 MSA and 100 RSA markets. In 1998, USCC has paid approximately \$7.0 million into the universal service fund administered by the Universal Service Administrative Company ("USAC"). Thus, USCC has a large stake in any action the FCC may take regarding the appropriate percentage of wireless telecommunications revenues deemed to be interstate in nature.

USCC opposes FCC's designation of 15% as the appropriate percentage of interstate revenues for cellular carriers to include in their "universal service" worksheets and endorses the current

¹ See In the Matter of Federal-State Joint Board on Universal Service, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 98-278, released October 26, 1998 ("Order" and "FNPRM").

approach that wireless carriers determine their own percentages of interstate usage. USCC's comments will also discuss the policies the FCC should pursue to ensure that wireless carriers have a meaningful opportunity to be designated as "eligible telecommunications carriers" and thus participate in the provision of universal telephone service.

**I. The FCC Must Continue to
Allow Wireless Carriers to
Make Individual Determinations
Of Their Interstate Revenues**

In the Order (Para. 15) the FCC established, for cellular and broadband PCS licensees, an interim "safe harbor" percentage of 15% of their total telecommunications revenues to be designated as interstate/international in the FCC Form 457 "worksheets" submitted to the Commission twice a year. Cellular and PCS licensees using the 15% benchmark will not be subject to additional scrutiny by the FCC. Carriers showing percentages lower than 15% under the interstate/international categories of Form 457 will potentially be subject to justifying their calculations with "supporting data." In the FNPRM (Para. 20), the Commission seeks comment on whether that 15% benchmark should become a permanent requirement.

USCC opposes the 15% benchmark and urges the FCC not to make it a permanent requirement. It is wrong logically, legally and (from USCC's experience) factually.

USCC is cognizant of the fact that there are discrepancies among the percentages of interstate/international revenues reported by cellular and PCS carriers in their Forms 457 and of the possibility that some carriers may have deliberately under-reported those percentages in order to minimize their universal service contributions to support telephone service in "high cost" and "low income" areas. We believe, however, that these discrepancies are probably the result of different revenue streams rather than calculation errors or willful misrepresentation.

Moreover, even if it were assumed that there were a problem of inaccurate reporting of interstate revenues by certain carriers which the Commission were attempting to solve by imposing a fixed percentage benchmark, the FCC would still have to have a reasonable basis for its specific action taken and the Order discloses none. The Commission explains its adoption of the 15% cellular/PCS "safe harbor," which may have multimillion dollar consequences for wireless carriers, as follows:

"The Commission, therefore, will not seek supporting data from cellular and broadband PCS providers regarding their reported percentage of interstate telecommunications revenues if they report at least 15 percent of their cellular and broadband PCS telecommunications revenues as

interstate. We reach this determination based on the level of interstate traffic experienced by wireline providers. Several wireless telecommunications providers have suggested that the Commission consider establishing for cellular and broadband PCS providers a safe harbor percentage of interstate... revenues based on the percentage of interstate wireline traffic reported for proposes of the Dial Equipment Minutes (DEM) weighting program, i.e. approximately 15%... We believe it is reasonable to use this percentage as proxy for the percentage of interstate wireline traffic as a whole. Furthermore, we note that we do not have evidence before us to indicate that the level of interstate wireless traffic experienced by cellular and broadband PCS providers is less than the level experienced by wireline providers. (Footnotes omitted) (emphasis added).

Order, Para. 17. Thus, this crucial determination was based on an assumption, unsupported by any facts or argument, that wireless interstate traffic is equal to wireline traffic and on an absence of any evidence demonstrating the accuracy or inaccuracy of that assumption. Surely reasoned decision-making demands more than mere assumptions of this kind.

In point of fact, there is every reason to believe that the wireless interstate/international percentage will be lower than the wireline percentage if for no other reason than that those people who know a person's wireless telephone number, for which there is no "directory assistance," will tend to be his or her local friends and family, which will tend to increase the "intrastate" percentage of a cellular carrier's revenues above the percentage experienced by wireline carriers. Also, many carriers, such as USCC, restrict

the international calling opportunities of their customers to only certain of their markets in order to prevent fraud, which also reduces the interstate/international percentage.

Moreover, as the Commissions itself notes (Order, para. 24), observed discrepancies in "interstate" percentages among cellular/PCS providers may also reflect differences in the size and location of such markets (i.e. there will obviously be more "interstate" calls made from, say, northern New Jersey than central Iowa).

However, the Commission's attempt to take those differentials into account, (NPRM, Para. 24), by proposing different fixed percentages of "interstate" revenue within the cellular or PCS category, depending on the size or location of CMRS market, would, in our view, only create more problems in the areas of proper sub-category and market definition. These various and sundry percentages would have to be based on solid research and would have to be flexible enough to change with the areas to which they correspond. Keeping track of such changes would be a needless administrative burden for the FCC.

Also, market location and size are not the only relevant factors determining what percentage of a carrier's revenue is interstate in origin. A myriad of individual geographic, economic and social factors can and do influence the percentage of

interstate revenue for a given carrier, thus rendering the calculation of the interstate/international percentage particularly unsuited to any "one size fits all" resolution.

USCC will describe its method of making that calculation in Section III below. And while USCC is not and cannot be certain that its method achieves mathematical exactitude, it is certain that its calculation is more accurate than the application of a fixed percentage arbitrarily chosen by the FCC.

USCC has no basis upon which to judge the validity of other carriers' calculations. But it would be more equitable and principled, we submit, for the FCC to seek further documentation concerning calculation methodology from these carriers whom it believes may be inadequately reporting interstate revenues than to impose an arbitrary fixed percentage requirement, which is bound to be, in most instances, inaccurate, on all carriers.

**II. The 15% Benchmark and Other
Changes Proposed By The FCC
Are Unfair To Small and
Medium-Sized Carriers**

As shown above, the FCC cannot adopt a 15% requirement or any other fixed benchmark because there is no reason to believe it more accurately reflects the actual level of wireless interstate revenues than does the current system of individual determinations. And there is an additional and related reason not to adopt a fixed

benchmark, or any other seemingly "easier" approach to arriving at an interstate percentage as proposed in the FNPRM, and that is that all predetermined percentages would treat unfairly small and medium sized CMRS carriers, particularly those, like USCC, which primarily serve rural areas.

Smaller carriers own fewer and generally more rural markets than do larger carriers. Thus, a lower percentage of their customers' calls are likely to be interstate than would be the case with customers of larger carriers. This is particularly the case with respect to multisystem operators serving large metropolitan areas, such as the New York or Philadelphia areas, which cross state boundaries, as compared with small operators serving RSAs. The Commission's proposal would, in essence, require such smaller operators to subsidize the larger ones as well as their wireline and wireless competitors.²

Small and rural operators would also be disadvantaged by the FCC's proposal (Order, Para. 26) that CMRS carriers pay a per customer or per "access line" flat fee to fund USF obligations. Such a charge, while easier to calculate than a carrier's interstate percentage under present procedures, would nonetheless

² It should also be remembered that carriers now reporting interstate revenues in excess of 15% would cease to do so and simply adopt the 15% benchmark if it were adopted.

inevitably result in an unfair cross subsidy by carriers with lower than average amounts of interstate traffic to larger carriers with above average amounts of such traffic. Either the 15% benchmark or a flat fee would also abandon the FCC's previously stated principle that "end user" revenues are the fairest basis upon which to calculate federal universal service payments.³

Also, the proposed "simplifying assumption" that all "roaming" traffic might be treated as interstate in nature (FNPRM Para. 34) would be unfair to smaller carriers, because a higher percentage of their "roaming" traffic is likely to be intrastate in nature.

Finally, if any of the FCC's proposals to require a higher percentage of wireless carriers' revenues be characterized as "interstate" than were accurate is adopted, such carriers would, in essence, be required to pay federal high cost support out of their intrastate revenues. This would be unjust to such small carriers, which would, in essence, have to pay twice on their intrastate revenues for those purposes once to the federal government and once to the states.

III. USCC's Method of Calculating Its Interstate Revenues Is Fair And Reasonable

It is clear that if carriers can make a reasonably accurate

³ See Federal State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9206-9212 (1997).

determination of the percentage of their revenues which is actually interstate in origin, that that would be preferable to an inflexible application of an unproven percentage drawn from wireline data or an over-complicated system of percentages varying by market size and/or region.

USCC, however, acknowledges that making such an individual calculation is not simple and that any calculation will necessarily involve some degree of estimation.

This is because while CMRS carriers may be able to determine, in most instances, whether a given call is "interstate" in its origin and termination, they cannot so easily divide revenues (which include charges not directly linked to a particular call) between the interstate and intrastate categories. In fact, this is the only federal regulatory structure which requires such a calculation of CMRS carriers.

The task, therefore, is not to arrive at a perfect calculation but rather at a percentage figure which is more accurate than that which would be achieved by any other method.

USCC believes that its calculation methods meet that test. They involve both reasonable estimates and actual calculations where information is available.

Line 28 of the Form 457 (Revenues from other contributors), represents roaming payments from carriers whose customers have

roamed on USCC's systems. Line 28 represents the airtime charges for such roaming, which are the same on a per-minute basis regardless of whether the call is intrastate or interstate. USCC has data from the landline carriers with which it interconnects showing that approximately 10% of these total minutes are interstate/international in nature and so USCC's attributes 10% of these airtime revenues to the interstate category. However, because Line 28 records payments from "other contributors" such payments are not considered for universal service purposes.

Line 30 (other switched toll service) also involves payments from other "contributors," in this case for the use of USCC's systems by other systems' roaming customers making toll calls. However, for these calls USCC has market by market data from which to determine the percentage of such calls which are interstate in nature, namely the NXX codes of called parties which it obtains from its long distance carriers. If a call is made on a USCC system in one state to an NXX code in a different state, the "minutes" for that call are placed in the interstate category. The percentage of such "interstate" minutes is then calculated and applied to the revenues realized from such calls. The market by market percentages vary but are usually around 50%-60% interstate.

With respect to Line 39 (monthly customer and activation charges), such payments are inherently intrastate in nature.

However, because such payments may also involve a certain number of "free" minutes of use and because some of those minutes may involve interstate usage, USCC applies what it considers to be a generous interstate/international percentage factor, namely 5%, to such charges. This percentage only underscores the FCC's error in proposing a 15% benchmark figure since the bulk of those payments are indisputably "intrastate" in nature.

USCC estimates a percentage for Line 40 (Message charges including roaming, but ~~excluding toll~~), a line which includes its own "air time" charges and reimbursements received from its own customers for payments USCC has made to other carriers for such customers' out of market roaming, at 10% interstate/international, as it does on Line 28. Again USCC considers this a generous estimate. Most air time charges for non-toll calls involve local calls and it is jurisdictionally unclear if reimbursement payments made to USCC by customers for their calls made while roaming are properly deemed "interstate" at all.

Finally, USCC also can make market by market calculations for Line 44 (switched toll service) on exactly the same basis as for Line 30, by drawing on the NXX code data from USCC's long distance carriers, and the percentages attributed to the interstate category are similarly large.

USCC considers its methods to be fair and accurate. Where

calls can be determined to be interstate, USCC uses that data to determine what revenues are also interstate. Where payments are not readily linked to the intrastate or interstate or international jurisdictions, USCC makes a reasoned estimate of the percentage which is interstate/international.

These methods are, we believe, similar to those of AirTouch outlined at Paragraphs 38-39 of the Order.⁴

USCC considers its methods to be a fairer calculation of its interstate revenues than any of the alternative methods outlined in the Order and accordingly asks that the FCC permit their continuation.

**IV. The FCC Should Leave The
Designation Of Eligible
Telecommunications Carriers
To The States And The States
Must Adhere To Competitively
Neutral Policies**

In the last part of the FNPRM (Paras. 44-53), the FCC seeks

⁴ USCC does not believe that most of the "simplifying assumptions set out at Paragraphs 29-34 of the Order would be useful in improving these calculations. When it can, USCC determines whether a call is "interstate" by ascertaining the cellular market where it originates and the NXX code to which it is directed. We see no reason also to have to determine "the antenna that first receives the call" (FNPRM Para. 30) as a means of determining whether a call is interstate in nature. We also see little use in an MTA definition for intrastate and interstate revenues (FNPRM Para. 32) as MTAs are not meaningful concepts in the cellular world and having to superimpose them on cellular markets would only add more needless complexity to this process.

comment on a variety of issues regarding the policies needed to promote competition in the provision of services eligible for universal service support.

USCC believes that the FCC must move forward with its delineation of a new universal service support system, in which the governing principle will be competitive neutrality and in which all qualified "eligible telecommunications carriers" ("ETCs") will be able to receive support for providing services deemed eligible for universal service support.

USCC will comment as appropriate as the FCC's implementing proposals become more explicit. However, the following principles should guide the Commission as it creates the new structure.

As noted above, the first principle must be competitive neutrality. The post-1996 Act universal service support system requires large payments from wireless carriers, which makes those carriers an integral part of the nation's universal service structure. They thus must have a fair opportunity to provide supported services, as well as pay for them, especially where their cost advantages may enable them to do so more efficiently than wireline carriers.

Second, USCC believes that the process of ETC designation and regulation should be handled at the state level, subject to federal oversight and monitoring to ensure competitive neutrality and removal of entry barriers.

The states are in the best position to know how to make the competitive provision of universal service work in their own unique circumstances. Thus, the FCC's proposals (FNPRM, Paras. 46-49) to impose federal minimum "basic service" or "local service" requirements on CMRS carriers as a pre-condition for their designation as ETCs points in the wrong direction.

In a competitive environment, all ETCs will have to attract customers and wireless ETCs will have the strongest competitive reasons to market reasonably priced packages.

Moreover, what all carriers, wireless and otherwise, need is not micromanagement of their pricing plans, but a workable overall universal service structure. That, we submit, is what the Commission should be concentrating on now.

Conclusion

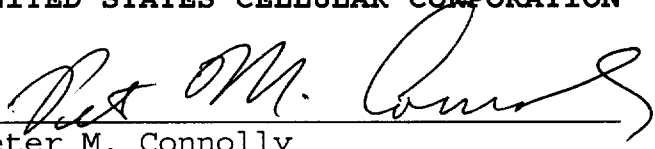
For the foregoing reasons, the FCC should continue to permit CMRS carriers to make their own determinations of their "interstate" revenues and should move forward with the creation of

a fair and competitively neutral universal service support structure.

Respectfully submitted

UNITED STATES CELLULAR CORPORATION

By:


Peter M. Connolly
Koteen & Naftalin, L.L.P.
1150 Connecticut Ave., N.W.
Washington, D.C. 20036

January 11, 1999

Its Attorneys